



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NORTHEAST REGIONAL OFFICE

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CERTIFIED MAIL

June 21, 2007

Richard A. Nylen, Esq.
Lynch DeSimone & Nylen, LLP
12 Post Office Square
Boston, Massachusetts 02109

Re: NEWBURYPORT - Solid Wastes/COR
Crow Lane Landfill
Odor Control Measures – Southwest Corner
FMF No. 39545

Dear Attorney Nylen:

The Massachusetts Department of Environmental Protection, Northeast Regional Office, Bureau of Waste Prevention, Solid Waste Management Section ("MassDEP") and the Office of the Attorney General are in receipt of your letter dated June 20, 2007. Your letter states your client, New Ventures Associates, LLC ("New Ventures"), proposes to take the following four actions to control and mitigate the continuing release of landfill gas from the southwest corner of the Crow Lane Landfill ("Landfill") in Newburyport, Massachusetts.

1. Remove tarps from the southwest corner near the edge of the Flexible Membrane Liner ("FML").
2. Place dirt fines over the existing C&D material.
3. Place Spray-On material on top of the dirt fines to encase the fines and provide cover.

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4. Determine whether the installation of the landfill gas extraction wells on the southwest corner of the landfill can be expedited and that SITEC, New Ventures' consultant, is preparing a design plan for review and approval by the MassDEP.

New Ventures proposes to undertake these actions in response to the continuing occurrence of nuisance odors in the neighborhoods in the area of the Landfill. Ambient air monitoring of the neighborhoods by New Ventures and the MassDEP's consultant, Shaw Environmental, Inc. of Salem, New Hampshire, has confirmed the occurrence of the nuisance odors is due to the presence of hydrogen sulfide in the ambient air as a result of the release of landfill gas from the Landfill. At times the concentration of hydrogen sulfide gas in the ambient air reached levels that threaten the public health, safety, and welfare in the neighborhoods surrounding the landfill.

On June 20, 2007, the MassDEP transmitted to you by email and overnight mail a Notice ("Notice") in accordance with the provisions of paragraph (9) of the of the Preliminary Injunction entered on October 20, 2006 in *Commonwealth of Massachusetts v. New Ventures Associates, LLC*, Suffolk Superior Court, Civil Action No. 06-0790 C as amended by order of the Court on November 1, 2006 and February 22, 2007 (the "Order"). The Notice informed you that the continuing releases of noxious gas from the Landfill had resulted in the occurrence of nuisance odors in neighborhoods to the south and east of the Landfill on June 16, 18, 19, and 20, 2007.

The Notice also informed you that the concentrations of hydrogen sulfide gas in the ambient air from the landfill gas emissions threatened or potentially threatened the health, safety and welfare of the residents in these neighborhoods. In addition, the Notice directed New Ventures to immediately take any and all actions to abate and eliminate the occurrence of nuisance odors and hydrogen sulfide emissions from that Landfill that pose a threat to the public health, safety and welfare in order to comply with 310 CMR 7.01 and 7.09 et seq., 310 CMR 19.117 et seq. and the Order including, without limitation the following.

1. Subject to approval by the MassDEP, place a temporary cap on the Landfill's Phase IA Area that consists of a layer of low permeability soil equivalent to clay and that is at least 1 foot thick and that is covered with tarps or an alternative cover material to minimize the infiltration of precipitation and the potential for erosion of the low permeability layer.
2. The repair and adjustment of the landfill gas extraction system in accordance with Appendix A of the Order to optimize the operation of the system and to achieve the maximum radius of influence for the vertical landfill extraction wells, including operation of the landfill gas blanket in the Landfill's Phase II Area.
3. The installation and operation of additional vertical landfill gas extraction wells within the Landfill's Phase IA Area including, unless otherwise approved by the MassDEP, extraction wells EW-10 and EW-13.

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4. The removal of odiferous leachate from the wetland to the east of the Landfill and the continued maintenance and pumping of the leachate collection tanks.

With regards to the actions proposed in your June 20, 2007 letter the MassDEP finds the following.

1. The proposed placement of dirt fines with the Spray-On material as proposed in lieu of the current tarps is not sufficient for purposes of replacing the impermeable tarps and controlling the emission of landfill gas from and the infiltration of precipitation into the Landfill. As described in the Notice the cover material must be a low permeability soil such as clay. This includes soil that meet the Unified Soil Classification System classifications specified at 310 CMR 19.130(15)(d)3.a. for Intermediate Cover. The dirt fines and the Spray-On material proposed by New Ventures have not been demonstrated to meet these criteria and, based on the observations of MassDEP personnel and information previously submitted by New Ventures concerning the most recent Spray-On material used at the site, these materials would not meet this standard. Therefore, the proposed placement of these materials is not acceptable in lieu of the placement of the tarps and/or a suitable low permeability soil cover.

In addition, the dirt fines are produced from the processing of construction and demolition waste and are a subset of the Construction and Demolition (C&D) Material used at the Landfill for grading and shaping. Paragraph (2) of the Order requires that all C&D Materials placed at the Landfill be mixed with soil at a ratio of 1:1 by volume during placement. The removal of the tarps and the placement of the dirt fines and Spray-On material as proposed by New Ventures would violate paragraph (2) and paragraph 1(j) [tarp placement] of the Order.

However, the MassDEP believes that the placement of the Spray-On material beneath the existing tarps may aide in the temporary abatement of landfill gas emissions from the southwest corner. Therefore, MassDEP agrees to the placement of the Spray-On material beneath the tarps (that is, removal of the tarps, placement of the Spray-On material and the replacement of the tarps) as a temporary measure contingent on the installation of an appropriate temporary soil cap approved by MassDEP no later than June 30, 2007, unless the MassDEP approves an alternative date.

In addition, New Ventures proposal does not address the continuing outbreaks of landfill gas on the west side and northwest corner of the landfill due to the improper anchoring of the Geocomposite gas vent blanket and FML in those areas. New Ventures must implement measures to eliminate the migration of landfill gas along the top of the berm.

Therefore, the MassDEP does not authorize New Ventures to remove the tarps and replace them with a mixture of dirt fines and a Spray-On material. The MassDEP does

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authorize New Ventures, as described above, to place the Spray-On material in the southwest beneath the tarps.

2. The MassDEP concurs with expedited installation of the extraction wells in the southwest corner. Based on conversations between yourself and the Office of the Attorney General, the MassDEP understands, that New Ventures intends to submit the proposed design and schedule to the MassDEP by the end of this week. However, the MassDEP notes that in addition to the expedited installation of the landfill gas extraction wells, New Ventures must implement the actions identified in the Notice relative to the operation of the landfill gas extraction system including, without limitation the activation of the gas blanket within the Phase II Area and the optimum operation of the system including increasing the effective radius of influence of the existing landfill gas extraction wells.
3. New Ventures proposal does not address the removal of odiferous leachate from the wetland to the east of the landfill.

Lastly, in your letter you indicate that in previous requests to the MassDEP to replace the tarps with soil you stated that the tarps are not sufficient. However, in those requests you stated the MassDEP should allow the replacement of the tarps with the soil because New Ventures was experiencing problems in maintaining the tarps. These problems were due to New Ventures failure to secure the tarps in compliance with the Order.

In addition, from about April 13, 2007 to about May 18, 2007, the areas of the Landfill with exposed C&D Material were not covered by tarps or soil. As a result, precipitation infiltrated unimpeded into the landfill contributing to the generation of hydrogen sulfide, odiferous leachate and increased noxious emissions from the landfill.

On May 2, 2007, the MassDEP approved New Ventures proposal to place six (6) inches of soil on the landfill surface to control litter subject to the condition that in the inactive areas the soil be covered with tarps to control the infiltration of precipitation and erosion of the soil cover. On May 21, 2007, you requested on behalf of New Ventures that the MassDEP's decision be considered provisional and specifically objected to the condition imposed by MassDEP, stating that it was excessive, in part because New Ventures was replacing the tarps on the landfill and that the tarps would provide adequate cover in the inactive areas of the landfill. Your request did not mention any concerns or raise any issue about the adequacy of tarp coverage to control ambient landfill gas emissions.

The MassDEP reserves the right to require whatever additional actions are necessary beyond those described above to control and/or eliminate landfill gas emissions and to enforce compliance with state regulations including, without limitation 310 CMR 19.000 et seq. and 310 CMR 7.00 et seq., and the Order.

If you have any questions please contact me at (978) 694-3299.

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Sincerely,

**This final document copy is being provided to you electronically by the
Massachusetts Department of Environmental Protection.
A signed copy of this document
is on file at the DEP office listed on the letterhead.**

John A. Carrigan, Chief
Solid Waste Management Section

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